

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC. and AMERICAN
OVERSIGHT,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 19-10916-NMG

PLAINTIFFS' LOCAL RULE 16.1 STATEMENT

Pursuant to Local Rule 16.1, counsel for the parties have conferred. Plaintiffs now submit this Statement in anticipation of the scheduling conference set for August 7, 2019, at 3:00 p.m. Counsel for Defendant has indicated that Defendant intends to file a separate statement.

PLAINTIFFS' STATEMENT OF FACTS

1. On April 23, 2019, Plaintiffs American Civil Liberties Union of Massachusetts, Inc. (ACLUM) and American Oversight initiated this action against Defendant the U.S. Department of Homeland Security (DHS) under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), arising out of a FOIA request plaintiffs submitted to DHS on March 11, 2019.

2. As described in the Complaint, the Department of Homeland Security Appropriations Act for 2018 requires the Secretary of Homeland Security to submit to Congress “a risk-based plan for improving security along the borders of the United States.” *See* Compl. ¶ 8, ECF No. 1.

3. The Act also requires that the Secretary submit this plan concurrently to the Comptroller General, head of the Government Accountability Office (“GAO”), “who shall evaluate the plan and report to the Committees on Appropriations . . . on the strengths and weaknesses of such plan not later than 120 days after receiving such plan.” Consolidated Appropriations Act, 2018, H.R. 1625, 115th Cong., Div. F § 231 (2018).

4. According to a February 5, 2019 letter from the Congressional Hispanic Caucus to the Department of Homeland Security Conference Committee, DHS submitted its plan (the “Border Security Plan”) to Congress on December 21, 2018. Compl. ¶ 9 & n.1.

5. On March 11, 2019, ACLUM and American Oversight submitted a FOIA request to DHS requesting a copy of the Border Security Plan.

6. On March 19, 2019, DHS acknowledged receipt of Plaintiffs’ FOIA request. However, as of the date the Complaint was filed, DHS had not produced a copy of the document, nor had it issued any determination as to the scope of responsive records it intended to produce or withhold and the reasons for any withholdings.

7. DHS has since notified counsel for plaintiffs that it has located the Border Security Plan. DHS has not yet produced the requested record or demonstrated that the requested record is lawfully exempt from production.

8. On July 16, 2019, the GAO publicly released, without any redactions, its Assessment of the Department of Homeland Security’s Border Security Improvement Plan, as required by the Department of Homeland Security Appropriations Act for 2018.¹

¹ U.S. Gov’t Accountability Office, GAO-19-538R, *Border Security: Assessment of the Department of Homeland Security’s Border Security Improvement Plan* (July 16, 2019), <https://www.gao.gov/products/GAO-19-538R>.

PLAINTIFFS' PROPOSED SCHEDULE

9. Plaintiffs have requested that DHS produce a single, identified record. DHS already released this record to Congress last December. DHS also released this record to the GAO, resulting in a detailed analysis that was made public on or about July 16th. In light of these extensive disclosures, Plaintiffs see no basis for any further delay in the production of the requested record, nor any basis for redacting any of its content.

10. Plaintiffs propose the following schedule for expeditious resolution of this case:

- a. DHS shall produce to plaintiffs a copy of the requested record on or before August 21, 2019.
- b. Should DHS withhold the record in full or in part under claim of exemption, it shall provide to Plaintiffs, on or before August 21, 2019, a *Vaughn* index setting forth the bases for its withholding(s) in sufficient detail to allow Plaintiffs to assess the withholding(s).
- c. DHS shall file any Motion for Summary Judgment on or before September 18, 2019.
- d. Plaintiffs shall file their Opposition and any Cross-Motion for Summary Judgment on or before October 9, 2019.
- e. DHS shall file its Reply and Cross-Opposition on or before October 30, 2019.
- f. Plaintiffs shall file their Cross-Reply on or before November 13, 2019.²

² As discovery is generally rare and unnecessary in FOIA cases, the parties have not included a Discovery Plan as contemplated by Local Rule 16.1(d)(1). However, Plaintiffs reserve the right to seek discovery should it become necessary in the course of this action.

DEFENDANT’S PROPOSED SCHEDULE

11. Defendant’s counsel has informed Plaintiffs that Defendant intends to file a separate statement and proposed schedule.

Dated: July 31, 2019

Respectfully submitted,

/s/ Daniel L. McFadden
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Certificate of Service

I hereby certify that this document will be served on all registered participants through the Court's CM/ECF system.

July 31, 2019

/s/ Katherine M. Anthony